

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHEASTERN LEGAL
FOUNDATION, INC.,

Plaintiff,

v.

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE,

Defendant.

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CIVIL ACTION

FILE NO. _____

COMPLAINT

Plaintiff Southeastern Legal Foundation, Inc. (SLF), for its Complaint against Defendant the Office of the Director of National Intelligence (ODNI), states as follows:

INTRODUCTION

1. The Freedom of Information Act (the FOIA), 5 U.S.C. § 552, enacted in 1966, provides the public with a right of access to federal agency records.

2. The people must know what the government is doing. “Open government has been recognized as the best insurance that government is being

conducted in the public interest.”¹ Our Founding Fathers’ commitment to open government and the public’s right to information can be seen in the First Amendment, which “protects not only the right of citizens to speak and publish, but also to receive information.”² The FOIA is “an affirmative congressional effort to give meaningful content to constitutional freedom of expression.” *See* S. Rep. No. 93-854, at 153-54 (May 16, 1974).

3. This is an action brought pursuant to the FOIA to compel Defendant to produce records responsive to an outstanding FOIA request submitted to Defendant on May 14, 2019.

4. In its FOIA request, SLF sought public records relating to communications regarding the collection of memos known as the “Steele Dossier.”

5. Thirty-one days (not including weekends and federal holidays) have lapsed since Defendant received SLF’s FOIA request. Defendant has failed to meet the statutory deadline for its response in the form of a determination to the FOIA request dated May 14, 2019 and received by Defendant no later than May 28, 2019,³

¹ *Am. Fed’n of Gov’t Emp.’s v. Rosen*, 418 F. Supp. 205, 207 (N.D. Ill. 1976).

² *Providence Journal Co. v. FBI*, 460 F. Supp. 762, 776 (D.R.I. 1978) (overturned on other grounds).

³ The United States Postal Service Tracking System indicates that Defendant received the FOIA Request on May 20, 2019. Defendant acknowledged receipt by

because it failed to respond within 30 days (not including weekends and federal holidays). *See* 5 U.S.C. § 552(a)(6)(A)(i) (providing that Defendant has 20 days excluding weekends and federal holidays to provide a determination); *see also id.* § 552(a)(6)(B)(i) (allowing Defendant to request a ten day extension).

6. Accordingly, SLF files this lawsuit to compel Defendant to comply with the FOIA.

THE PARTIES

7. Plaintiff Southeastern Legal Foundation is a national nonprofit, public interest law firm and policy center that advocates for constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF's programs include analysis, publication, and a transparency initiative seeking public records relating to communications regarding the "Steele Dossier."

8. Defendant ODNI is a federal agency headquartered in Washington, D.C. On information and belief, Defendant has possession, custody, and control of the records to which SLF seeks access.

signing the certified mail return receipt on May 28, 2019. For purposes of calculating the statutory time periods, Plaintiff has used the later of these two dates.

JURISDICTION AND VENUE

9. SLF brings this lawsuit pursuant to the FOIA. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28 U.S.C. § 1331, because the resolution of disputes under the FOIA presents a federal question.

10. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Georgia.

FACTUAL BACKGROUND

11. In a letter dated May 14, 2019, SLF submitted a FOIA request by certified mail to Defendant ODNI (the FOIA Request).

12. In the FOIA Request, SLF sought the following records for the time period May 2016 to February 2017:

All records of communication (including emails on both .gov and non-.gov accounts, text messages, and instant chats) between the office of the Director of Central Intelligence, including but not limited to former CIA Director John Brennan, and the office of the Director of the Federal Bureau of Investigation, including but not

limited to former FBI Director James Comey, regarding the collection of memos known as the “Steele Dossier.”

All records of communication (including emails on both .gov and non-.gov accounts, text messages, and instant chats) between the office of the Director of National Intelligence, including but not limited to former ODNI Director James Clapper, and the office of the Director of the Federal Bureau of Investigation, including but not limited to former FBI Director James Comey, regarding the collection of memos known as the “Steele Dossier.”

13. SLF sought a waiver of search, review, and reproduction fees pursuant to the FOIA (5 U.S.C. § 552(a)(4)(A)(iii)) because the information sought was in the public interest, was likely to contribute to public understanding of the operations and activities of government, and because SLF had no commercial interest in the information.

14. The United States Postal Service Tracking System shows that Defendant received the FOIA Request on May 20, 2019.

15. Defendant acknowledged receipt on May 28, 2019, by signing the certified mail return receipt.

16. At the time of this Complaint, 31 days, excluding weekends and federal holidays, have now lapsed since Defendant acknowledged receipt of the FOIA Request on May 28, 2019.

17. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request.

18. As of the date of this Complaint, Defendant has failed to (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify SLF of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform SLF that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of the FOIA, 5 U.S.C. § 552)

19. SLF realleges paragraphs 1 through 18 as if fully stated herein.

20. Defendant is in violation of the FOIA by failing and/or refusing to employ search methods reasonably likely to lead to the discovery of records responsive to SLF's FOIA Request and, accordingly, failing and/or refusing to produce any and all non-exempt records responsive to the request.

21. SLF is being irreparably harmed by Defendant's violation of the FOIA and will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

22. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request because Defendant was required to make a final determination of SLF's FOIA Request

within the time limits set by FOIA. Accordingly, Defendant's final determination was due by July 9, 2019 at the latest.

23. Because Defendant failed to make a final determination on SLF's FOIA Request within the time limits set by the FOIA, SLF is deemed to have exhausted its administrative appeal remedies.

PRAYER FOR RELIEF

24. Enter an immediate order directing Defendant to preserve all records potentially responsive to the FOIA Request, and prohibiting Defendant, its employees, agents, or representatives from transporting, concealing, removing, destroying, or in any way tampering with records potentially responsive to said request;

25. Enter an order directing Defendant to conduct searches for any and all records responsive to the FOIA Request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA Request;

26. Enter an order directing Defendant to produce, by a certain date, any and all non-exempt records responsive to the FOIA Request and a *Vaughn* index of any responsive records withheld under claim of exemption;

27. Enter an order enjoining Defendant from continuing to withhold any and all non-exempt records responsive to the FOIA Request;
28. Award reasonable attorneys' fees, costs, and expenses; and
29. Grant any and all other relief as this Court deems just and proper.

Respectfully submitted this 10th day of July, 2019.

Southeastern Legal Foundation

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